

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff/Respondent,

v.

ERNEST SOQUI,  
Defendant/Petitioner.

Civil No. 11CV1495-JLS  
Criminal No. 09CR0710-002-JLS

**ORDER:**

**1) DISMISSING PETITIONER'S  
MOTION UNDER 28 U.S.C. §  
2255;**

**2) DENYING PETITIONER'S  
MOTION TO EXPAND THE  
RECORD; and**

**3) DENYING CERTIFICATE OF  
APPEALABILITY**

Currently pending before the Court is Petitioner's Motion for Vacate and Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. No. 377) and Motion to Expand the Record (Doc. No. 421). The Court has reviewed the record in this case and, for the reasons set forth below, will dismiss Petitioner's § 2255 Petition for lack of jurisdiction and deny Petitioner's motion to expand the record as moot.

**DISCUSSION**

Petitioner Ernest Soqui was charged with fourteen others in a nineteen count indictment alleging various racketeering and drug offenses. Petitioner was named in six

1 counts: Count 1, which alleged a RICO conspiracy in violation of 18 U.S.C. § 1962(d);  
2 Counts 11 and 15, which alleged conspiracies to distribute methamphetamine (in excess  
3 of 50 grams) in violation of 21 U.S.C. § 841(a)(1) and 846; and Counts 12, 16, and 17,  
4 which alleged distribution of methamphetamine in violation of 21 U.S.C. § 841(a)(1).  
5 With respect to the substantive distribution counts, Counts 12 and 16 alleged quantities of  
6 methamphetamine in excess of 50 grams, while Count 17 alleged a quantity in excess of  
7 5 grams.

8 On March 11, 2010, Defendant entered a plea agreement and pled guilty to Count  
9 15 of the indictment which alleged a conspiracy to distribute 50 grams and more of  
10 methamphetamine beginning on a date unknown and continuing to December 10, 2008.  
11 Under the terms of the plea agreement, Petitioner agreed to waive any right to appeal or  
12 to collaterally attack the conviction and sentence. (Plea Agreement, Doc. No. 193 ¶ XI).  
13 As part of the factual basis set forth in the plea agreement, Defendant admitted that he  
14 was personally involved in the distribution of approximately 175 grams of  
15 methamphetamine (actual) in the San Diego area between June and December 2008. (*Id.*  
16 ¶ II(B)(3)). Petitioner was sentenced by this Court on July 2, 2010 to a term of  
17 imprisonment of 169 months and 5 years of supervised release.

### 18 ANALYSIS

19 In his §2255 motion, Petitioner contends that his conviction is invalid because he  
20 was denied effective assistance of counsel in three respects. First, Petitioner contends  
21 that the his plea agreement was not entered voluntarily and that the plea agreement was  
22 poorly negotiated. Second, Petitioner maintains that his counsel failed to object to an  
23 allegedly improper criminal history calculation used at sentencing. Third, Petitioner  
24 faults counsel for her failure to challenge a Guidelines sentence enhancement applied by  
25 the Court.

26 Petitioner's first objection is pivotal to the Court's resolution of this matter, for if  
27 Petitioner's plea agreement was entered knowingly and voluntarily, his waiver of  
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1 collateral attack would bar his further claims. *See Washington v. Lampert*, 422 F.3d. 864,  
2 871 (9th Cir. 2005) (recognizing that if sentencing agreement's waiver of the right to file  
3 a federal habeas petition under 28 U.S.C. § 2254 was valid, district court lacked  
4 jurisdiction to hear the case).

5 The court determines voluntariness by looking at the totality of the circumstances  
6 surrounding the signing and entry of the plea agreement. *United States v. Kaczynski*, 239  
7 F.3d 1108, 1114 (9th Cir. 2001). In assessing the voluntariness of the plea, the court  
8 must accord great weight to statements made by the defendant contemporaneously with  
9 his plea. *Chizen v. Hunter*, 809 F.2d 560, 562 (9th Cir. 1986). The representations of the  
10 defendant, his lawyer, and the prosecutor, as well as the judge's findings in accepting the  
11 plea, "constitute a formidable barrier in any subsequent collateral proceedings."  
12 *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977).

13 "A claim of ineffective assistance [of counsel] may be used to attack the  
14 voluntariness and hence the validity of a guilty plea." *United States v. Keller*, 902 F.2d  
15 1391, 1394 (9th Cir. 1990); *see Hill v. Lockhart*, 474 U.S. 52, 56-57 (1985). To prevail  
16 on an ineffective assistance of counsel claim, a defendant must show that counsel's  
17 performance was deficient and that this deficient performance prejudiced the defendant.  
18 *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *United States v. Jeronimo*, 398 F.3d  
19 1149, 1155 (9th Cir. 2005). In the context of guilty pleas, to satisfy the "prejudice"  
20 requirement "the defendant must show that there is a reasonable probability that, but for  
21 counsel's errors, he would not have pleaded guilty and would have insisted on going to  
22 trial." *Hill*, 474 U.S. at 59.

23 Petitioner contends that he did not voluntarily plead guilty because his attorney  
24 told him that he had to accept the plea agreement and there was nothing else that could be  
25 done. Petitioner further contends that his attorney should have negotiated a plea to Count  
26 17 of the indictment because that count alleged a lesser quantity of methamphetamine and  
27 thus would have lessened Petitioner's sentencing exposure.  
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1 Petitioner fails to establish, however, that his attorney's performance fell below  
2 professional standards. Assuming that Petitioner's allegations are true, advising an  
3 accused to plead guilty is not invariably improper. In fact, a guilty plea is often the best  
4 option available to an accused in the face of overwhelming evidence. While the Court is  
5 not aware of the extent of the Government's evidence in this case, Petitioner has  
6 presented nothing to suggest that going to trial would have been a plausible option for  
7 him. To the contrary, Petitioner merely suggests that counsel could have obtained a more  
8 favorable plea agreement. This speculation is not sufficient to demonstrate that counsel's  
9 performance was deficient, or that Defendant was prejudiced by entering the negotiated  
10 plea agreement.

11 In the written plea agreement, Petitioner acknowledged he understood the elements  
12 of the offense to which he pleaded guilty, and that he had "fully discussed the facts of this  
13 case with defense counsel." (Plea Agreement, Doc. No. 193, at 2). Petitioner admitted  
14 he "committed each of the elements of the crime" and admitted the factual basis for the  
15 guilty plea, which included an admission that he was "personally involved in the  
16 distribution of approximately 175 grams of methamphetamine (actual) in the San Diego  
17 area." *Id.* Petitioner further acknowledged having reviewed the Plea Agreement with his  
18 attorney and his understanding of its terms. *Id.* at 4, 9. Significantly, Petitioner  
19 represented he entered the guilty plea knowingly and voluntarily. As stated in the Plea  
20 Agreement:

21 Defendant represents that:

- 22 A. Defendant has had a full opportunity to discuss all the facts and  
23 circumstances of this case with defense counsel, and has a clear  
24 understanding of the charges and the consequences of this plea;  
25 B. No one has made any promises or offered any rewards in return  
26 for this guilty plea, other than those contained in this  
27 agreement;  
28 C. No one has threatened Defendant or Defendant's family to  
induce this guilty plea; and

1 D. Defendant is pleading guilty because in truth and in fact  
2 Defendant is guilty and for no other reason.

3 *Id.* at 4.

4 This record undermines Petitioner's argument his counsel was ineffective by  
5 forcing Petitioner into signing the plea agreement. Furthermore, Petitioner makes no  
6 showing of any reasonable probability that, but for counsel's alleged errors, he would not  
7 have pleaded guilty and insisted on going to trial. Nor does Petitioner make any showing  
8 that ineffective assistance of counsel caused him to miss out on a more favorable earlier  
9 plea offer. *See Missouri v. Frye*, 132 S.Ct. 1399 (2012) (recognizing that *Hill v. Lockhart*  
10 does not necessarily provide the sole means for demonstrating prejudice arising from the  
11 deficient performance of counsel during plea negotiations.)

12 Although a plea bargain to Count 17 instead of Count 15 would certainly have  
13 lowered Petitioner's sentencing exposure, there is no legal requirement that a defendant  
14 be afforded the opportunity to plead guilty to the least severe offense. The record  
15 establishes that Petitioner knowingly and voluntarily pled guilty to Count 17, conspiring  
16 to distribute methamphetamine in excess of 50 grams, a plea fully supported by his  
17 admission that he was personally involved in the distribution of approximately 175 grams  
18 of methamphetamine in the San Diego area. Accordingly, having considered the  
19 substantial weight accorded Petitioner's on-the-record statements, Petitioner's challenge  
20 to the voluntariness of his plea because of his counsel's performance in advising  
21 Petitioner to enter the plea is without merit.

22 Petitioner also alleges he received ineffective assistance of counsel at the time of  
23 sentencing because counsel failed to object to an allegedly improper criminal history  
24 calculation used at sentencing and failed to challenge a Guidelines sentence enhancement  
25 applied by the Court. Because these claims of ineffective assistance of counsel do not  
26 challenge the validity of his guilty plea or waiver of the right to collaterally attack his  
27 conviction and sentence, these claims is barred and the Court does not have jurisdiction  
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1 over them. *See United States v. Racich*, 35 F. Supp. 2d 1206, 1218 (S.D. Cal. 1999)  
2 (holding that a plea agreement's waiver provision bars claims of ineffective assistance of  
3 counsel that do not implicate the validity of the waiver itself).

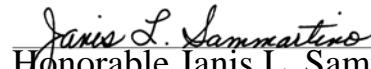
4 Accordingly, Defendant's Motion to Expand the Record, which seeks to provide  
5 additional information regarding Defendant's criminal history, is **DENIED AS MOOT**.

### 6 **CONCLUSION**

7 Having carefully considered Petitioner's claims in view of the case files and  
8 records, the Court finds the record sufficiently developed to conclusively show that  
9 Petitioner is entitled to no relief. The Court finds Petitioner's waiver of collateral attack  
10 to be valid and enforceable. Accordingly, this Court lacks jurisdiction and Petitioner's  
11 Motion Pursuant to 28 U.S.C. § 2255 is **DISMISSED**. Additionally, the Court **DENIES**  
12 Petitioner a certificate of appealability, as Petitioner has not made a substantial showing  
13 that he has been denied a constitutional right. *See* 28 U.S.C. § 2253(c) (providing that a  
14 certificate shall issue "only if the applicant has made a substantial showing of a denial of  
15 a constitutional right."). The Clerk shall enter judgment accordingly.

### 16 **IT IS SO ORDERED.**

17 DATED: July 17, 2013

18   
19 Honorable Janis L. Sammartino  
20 United States District Judge  
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